

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 710.7, 711, 8591, and 8842 of the Fish and Game Code and to implement, interpret or make specific sections 710.7, 711, 8140, 8590, 8591, 8593, 8595, and 8842, of said Code, proposes to amend Section 120.3 and add Section 120.45, Title 14, California Code of Regulations, relating to spot prawn trawling.

Informative Digest/Policy Statement Overview

The spot prawn trawl fishery is open-access and is closed from November 1 through January 31 statewide. The Department's recently released report, *Results of California Department of Fish and Game Spot Prawn Trawl and Trap Fisheries Observer Program 20002-2001*, estimated a total bycatch in the trawl fishery of 5 tons of bocaccio, 1.2 tons of cowcod, and 6.5 tons of darkblotched rockfish in a one-year period. This level of bycatch of these overfished rockfish species is considered unacceptable, and the Commission has taken emergency action to prohibit trawling for spot prawn in California for the rest of 2002 fishing season.

The Department is proposing the following regulatory options to be considered individually or in combination for implementation by February 1, 2003, the reopening of the spot prawn trawl season:

- a moratorium on the issuance of new spot, ridgeback, and golden prawn trawl permits (these species are combined under a single permit);
- a requirement that all spot prawn trawl vessels cooperate with the federal groundfish observer program or require their participation in a contract observer program;
- a prohibition on the use of trawl nets to take spot prawn;
- a prohibition on the use of trawl nets to take spot prawn with the allowance of a conversion to trap fishing, subject to certain minimum landing requirements from the trawl fishery during the 1997 to 1999 window period;
- the establishment of a minimum depth restriction for spot prawn trawling south and north of Point Reyes at 150 fathoms and 250 fathoms, respectively;
- a requirement that all spot prawn trawl vessels use small roller gear (8-inch diameter or smaller) and/or hard grate excluders in their nets;
- the establishment of a six-month closed season for spot prawn trawling that runs from September 1 through the end of February; and
- a requirement that all spot prawn trawl vessels be equipped with a vessel monitoring system when the federal government has an operational monitoring program.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Monterey Beach Resort Hotel, 2600 Sand Dunes Drive and Highway 1, Monterey, California, on Friday, December 6, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 29, 2002 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 6, 2002, at the hearing in Monterey, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Kristine Barsky, Marine Region, Department of Fish and Game, phone (805) 985-3114, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Each spot prawn trawler or buyer is considered a business. Spot prawn are landed either live or dead, but the live product demands a much greater price and is the preferred method of landing. In 2000 and 2001, 39 and 43 trawl vessels, respectively, landed spot prawn in California. Of those vessels, 22 and 21, respectively, landed more than 1,000 pounds of spot prawn at an average price of \$7.00/ pound (live). The estimated ex-vessel value of the spot prawn trawl fishery was \$1.4 million in 2001. The estimated loss to the fishery participants from a September-October closure alone would be \$0.4 million based on the ex-vessel value of spot prawn and seasonal trends in catch and effort. In addition to losses incurred by fishermen due to their inability to provide their product, California buyers, processors and consumers will suffer additional losses which are not easily quantified.

In recent years, a number of these vessels have also participated in trawl fisheries for pink shrimp, California halibut, ridgeback prawn, and sea cucumber (the other state-managed trawl fisheries). Although pink shrimp and sea cucumber are restricted access fisheries, the other two are open access. It is anticipated that a number of the affected spot prawn vessels would resume participation or participate more actively in these other fisheries if a prohibition on trawling went into effect. Increased participation in the other state-managed trawl fisheries would likely have a negative impact of unknown degree on the halibut and ridgeback trawl fisheries, and to a lesser degree pink shrimp and sea cucumbers. These fisheries are already fully exploited and additional effort will cause decreased success in the remaining trawl fisheries.

A vessel is a significant liability to the owner when it is not being used to fish. There are always berthing and maintenance fees. There is no resale value on a trawl vessel that can no longer be used to fish. Therefore cashing out is not an option for a fisherman with a trawl vessel and no permit guaranteeing a place in an existing fishery.

Conversion of trawl vessels to trap vessels would have a negative effect on the existing trap fishery participants and would also result in reduced income to the fishermen converting to a new gear type. The initial investment for each trap and associated rigging could run \$35 to \$75 per trap.

As opposed to a complete prohibition on spot prawn trawl activity, a depth closure would allow the larger trawl vessels (approximately 50 feet in length or greater), the ones that usually make the largest landings, to continue to operate, although on a limited basis. Results from the bycatch observer study showed that approximately 90 percent of all observed trawl tows occurred in water less than 150 fathoms deep. Small trawl vessels can not operate beyond the depth closure because of size, power and stability limitations.

A moratorium on new permits, or cooperation with a federal observer program are not expected to have negative impacts on business. However, a contract observer program would be costly for such a small fleet of vessels. Contract observers can easily cost from \$300 to \$500 a day. A large portion of the fleet would not be able to operate with the additional cost of such an observer program.

The gear restrictions being proposed might result in a reduced take of spot prawn. However, fish bycatch in the net is detrimental to the prawns, so there could also be a positive effect that offsets any shrimp loss. There would be an initial investment to convert to a small footrope and or install a hard grate excluder that would be difficult to quantify, although it is not expected to be prohibitive.

A six-month closed season would have a detrimental effect on trawl participants. The amount of income each trawl fisherman would lose during an additional three month closure is not quantifiable, but could make the fishery unviable economically for a number of participants, especially those with smaller vessels.

A vessel monitoring system, depending on the model selected, would range in cost between \$1700 and \$2700. This would be a one-time cost that would be amortized over time.

The Commission has made an initial determination that the adoption and amendment of these regulations may have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or
- (iv) exemption or partial exemption from the regulatory requirements for business.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

See section (a) above.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Dated: October 8, 2002